

### **Remarks**

Claims 1-3 and 12-44 were pending in this amendment. Claims 45-54 are added by this amendment, and claim 17 has been cancelled. Applicants respectfully request reconsideration of this application in light of this response.

#### **Rejection of Claims 1-3 and 12-44 under 35 USC 103(a)**

Claims 1-3 and 12-44 have been rejected under 35 USC 103(a) as being unpatentable over Apps et al ('874) in view of Kappel, et al. and Exhibit 2 from D.W. Plastics. Applicants respectfully traverse this rejection for the following reasons.

It appears that the Examiner's rejection and reasoning is based in wholly or in great part on his rejection in the earlier parent case, while adding the words "contoured shape" to "logo". However, the claims presented in the present application are different than those in the parent case, and the old rejection cannot and does not apply to the present claims.

**Claim 1:** In discussing the Kappel reference, the Examiner's uses the words "contoured shape", where he previously used "logo". These words are not interchangeable, and the Examiner may not use them as such. For the sake of argument, even if Kappel arguably shows a "logo" (which term is not part of the present claims and thus not at issue here), Kappel does NOT show a wall having a contoured shape as claimed by Applicants. Thus, Kappel's inclusion in this rejection is misplaced.

Moreover, combining the cited references would not achieve the language of claim 1, which requires that the lower wall portions have an "upper edge and a lower edge each having a contoured shape substantially along the length thereof". None of the references, alone or combined, show a sidewall having an upper edge and a lower edge with such features. Apps and Kappel have straight, rectangular side walls. D.W. Plastics shows a square sidewall having a window with a curved lower edge.

The Examiner's rejection would even appear to contradict the Board of Patent Appeals and Interferences earlier decision in the parent case, where the Board stated that "D.W. Plastics does not suggest making the lower edge of the side wall in a similar wave shape." Thus, while Applicants' claim 1 uses different terminology than what was before the Board, the Board's

reasoning may be deemed persuasive to the present claim 1, which includes “a sidewall having an upper edge and a lower edge each having a contoured shape.”

Accordingly, it is respectfully requested that the rejection of claim 1 (and its dependent claims) be withdrawn for these reasons.

**Claims 12 and 29:** For the reasons above, independent claims 12 and 29 are also not made obvious by the cited references. Again, the Examiner’s comments in his rejection are based solely on a “contoured shape (logo)”. This term is found nowhere in independent claims 12 and 29. Thus, the Examiner’s rejection cannot be supported. Further, as noted above, the Kappel reference is not relevant to claims 12 and 29. The Examiner’s reliance on the rejection from the parent case is improper, and thus this rejection must be withdrawn.

For the sake of clarity only and not as a response to the Examiner’s aforementioned rejection which is improper and unsupported, the Applicants amend claims 12, 29 and 34 herein in order to more particularly point out and distinctly claim the subject matter. Claims 12, 29 and their dependent claims are believed to be in a condition for allowance.

**New Claims 45-49:** New claims 45-49 are also believed to be in a condition for allowance. Claim 45 is directed to a case where “one of the columns extends a first height above a first location along the upper edge of one of the pair of side structural members, wherein the first location is disposed between a corner pylon and an adjacent pylon, and wherein the one of the columns extends a second height above a second location along the upper edge of the other side structural member directly opposite the first location, wherein the first location and second location are spaced vertically apart.” Such features are not disclosed by the cited references, either alone or in combination.

**New Claims 50-54:** New claims 50-54 are also believed to be in a condition for allowance. Claim 50 is directed to a case where “a first column and second column each extend a similar height above a predetermined location along the upper edge of one of the pair of side structural members, wherein the predetermined location is disposed between a pair of adjacent pylons, and wherein a third column is located at the intersection of the case longitudinal axis and transverse axis has an upper surface which is substantially co-planar with the upper surface of

one of the plurality of pylons.” Such features are not disclosed by the cited references, either alone or in combination.

### CONCLUSION


Applicants believe that the application is in a condition for allowance. A notice of such allowance is respectfully requested. Further, if the Examiner believes that a telephone conference would help to expedite prosecution of this matter, he is invited at his convenience to contact the undersigned.

Respectfully submitted,

**William P. Apps et al.**

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By



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Attachment

**VERSION WITH MARKINGS TO SHOW CHANGES MADE****In the Title:**

Title (Amended):     Stackable Low Depth Bottle Case [With Integral Sidewall Logo]

**In the Claims:**

12.     (Amended) A stackable low depth bottle case comprising:  
a floor structure having an upper surface;  
a pair of side structural members attached to the floor structure and defining an inner compartment with the floor structure, the side structural members having a lower edge and an upper edge;

a plurality of pylons extending inwardly from the side structural members into the inner compartment, and a plurality of corner pylons defining corners of the case and extending into the inner compartment; and

a plurality of spaced upwardly projecting columns generally disposed within the inner compartment defining, in combination with the floor structure and the side structural members, a plurality of bottle retaining pockets, one of the columns extending a first height above a first location along the upper edge of one of the pair of side structural members, wherein the first location is disposed between a pair of adjacent pylons, and another of the columns extending a second height above a second location along the upper edge, wherein the second location is disposed between another pair of adjacent pylons, wherein at least one of the plurality of columns is located at the intersection of the case longitudinal axis and transverse axis and has an upper surface which is substantially co-planar with the upper surface of one of the plurality of pylons.

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29. (Amended) A low depth crate for storing and transporting bottles, the crate comprising:

a floor including a floor top surface having thereon a plurality of support areas for supporting an array of bottles;

a pair of side structural members attached to the floor and defining an inner compartment with the floor structure, the side structural members having a lower edge and an upper edge;

a plurality of pylons extending inwardly from the side structural members into the inner compartment; and

a plurality of spaced upwardly projecting columns generally disposed within the inner compartment defining, in combination with the floor structure and the side structural members, a plurality of bottle retaining pockets, wherein each of a pair of the columns is of substantially the same height, and extends [one of the columns extending] a first height above a first location along the lower edge of one of the pair of side structural members, and wherein another one of the columns extends [extending] a second height above a second location along the lower edge, wherein the another one of the columns has an upper surface which is substantially co-planar with the upper surface of one of the plurality of pylons.

34. (Amended) The crate of claim 29, wherein the [one] another one of the columns is located at the intersection of the case longitudinal axis and transverse axis.